

LEASE

1. PARTIES

This lease (**05-014-ACCD**) is entered into this 17th day of June 2004 by the Montana Department of Corrections located at 1539 11th Avenue, Helena MT 59620-1301 (hereinafter referred to as "Department") and the **Boys and Girls Club of Dawson County** (hereinafter referred to as "Club") located at PO Box 875, Glendive MT 59330.

2. PURPOSE OF LEASE

The Club has a need to lease premises in Glendive, Montana for the purpose of conducting Club business and the Department has premises available for lease, suitable for stated purpose. The Club and the Department therefore agree as follows:

3. PREMISES DESCRIPTION

The area of space being leased consists of the entire building known as Cottage II (hereinafter referred to as "Property") on the campus formerly known as Eastmont Human Services (Eastmont), located at 700 East Little Street, Glendive, Montana. The Property includes the attached fenced yard that is immediately adjacent to Cottage II.

4. TERM OF LEASE

The term of this Lease is for a period of ten months, beginning September 1, 2004 and terminating June 30, 2005, unless earlier terminated as provided in this Lease.

5. LEASE EXTENSION

This Lease may be extended for additional periods of time upon mutual agreement of the Parties - subject to the conditions of this Lease.

5. CONSIDERATION

The annual amount of rent the Club shall pay to Department is \$2,400.00, **payable in equal monthly installments of \$200.00**. The Club shall make monthly lease payments without the need for a separate invoice from Department. Lease payments are due on the first business day of the month.

6. PERMITTED USE

The Club, during the term of this Lease, is to use the Property exclusively as a facility for the activities and events of its organization. The Property is to be used primarily by the Club's board members, staff, volunteers, club members, and club members' families. Activities and events, involving access and use generally by the public or for other community purposes, may only occur with the express permission of the Department and during the hours designated herein. The Club is permitted to utilize the Property from 7:00 AM to 10:00 PM, seven days per week, and may use the Property at other times (i.e., overnight events) with prior written approval from the Department liaison, or designee. Club members, and their families, are to use the Property under appropriate supervision for the purpose expressed in the Club's brochure, entitled "The Positive Place for Kids", attached to this Lease.

The Club is responsible for informing its board, staff, members, family of members, and other participants and visitors of the conditions for use of the property in order to protect the integrity of the Eastmont facility. The Club may not use the Property for any purposes that are not in conformance with permitted activities under

applicable zoning regulations or as may be otherwise unlawful. The Club and Department are to cooperate in the resolution of any legal issues that may arise with respect to the use and conditions of the Property, inclusive of zoning matters.

7. UTILITIES

Telecommunications

The Club is directly responsible for scheduling, maintaining, and payment of communication connections and services (i.e., telephone, data, internet, etc.).

Gas and Electric

The Club is also financially responsible for the appropriate portion of the gas and electrical utility costs incurred in relation to the Property. However, gas and electric aren't separately metered to the Property, Cottage 3 and the facility yard lights are metered for electric only and gas is metered only for the facility as a whole. Because actual monthly costs can't be accurately determined by either party, the Club's utility payments will be determined using a formula based upon the amount of square footage leased by the Club, as relates to the total square footage of all buildings on the Eastmont campus. The Department will pay the utility company for gas and electric charges and will then invoice the Club for its share of these costs, in accordance with the agreed upon formulas, as follows:

A. Electric: The area of space being leased in Cottage 2 (7,826 sq. ft.) shall be divided by the total square footage of all Eastmont buildings serviced - except the main facility (26,331 sq. ft.) [i.e., $7,826 \div 26,331 = .297\%$]. Therefore, the Club shall pay twenty-nine and seven-tenths percent (29.7%) of electrical charges (excluding Cottage 3 and the yard lights which are individually metered) billed to the Department by Montana-Dakota Utilities Company (MDU).

B. Gas: Since Cottage II constitutes approximately 10% of the total square footage of the Eastmont buildings, the Club shall pay 10% of all gas charges billed to the Department until such time that the Department chooses to establish a separate meter for Cottage II. Once the separate meter is installed, the Club shall pay the entire gas bill for Cottage II.

Water and Sewer

The Club is responsible for coordinating direct billing and payment of City water and sewer, as it relates to the leased Property.

Sanitation

At no additional cost to the Club, the Club may dispose of its garbage in the dumpsters located on-site. If the Club's volume of garbage becomes excessive and taxes the capacity of the dumpsters, as determined by the Department, the Department shall make arrangements with the City of Glendive for installation of an appropriate dumpster to serve the Club and/or the Department. The Club may be financially responsible for any additional costs or fees incurred by the Department for this service.

8. PARKING SPACE

As a part of this lease, the Club is allowed adequate staff and visitor parking space, including the requisite number of handicapped spaces necessary to comply with the Americans with Disabilities Act. Parking spaces are for use by those persons participating in Club activities.

9. PARKING AREA AND SIDEWALK MAINTENANCE

The Club agrees to remove snow, ice, sand, gravel, and debris from the parking area and sidewalks immediately adjacent to Cottage II in a timely fashion. Once the Department selects a contractor to operate a DOC approved

program at the Eastmont facility, the Department intends to make the contractor responsible for snow removal in the parking lot of Cottage II. The Club will continue to be responsible for the sidewalks.

10. NOTICE/LIAISON

Any notice or demand required under this lease must be in writing, addressed to the liaison listed herein. Written notice shall be deemed given when hand delivered, or when mailed by first class mail, postage prepaid, to the addresses specified in this section.

The Department's liaison for purpose of receiving demand or notice is Loreen Barnaby, 606 N Merrill, Glendive MT 59330. Telephone # 406-377-4086.

The Club's liaison for purpose of receiving demand or notice is Kathy Lear, Executive Director, P0 Box 875, Glendive MT 59330. Telephone # 406-365-7999.

If either party changes its liaison or address, it must notify the other party, in writing, at the address provided herein.

11. INSPECTION

The Club shall permit the Department or its agent, upon prior notice, to enter into the Property at all reasonable times to maintain or inspect the leased premises or to make repairs, alterations, or additions to any portion of the building.

12. MAINTENANCE OF PROPERTY

The Department is responsible for provision and maintenance of the heating and cooling systems, electrical system, and fire alarm system services and for maintenance of the grounds (excluding snow removal), buildings and fencing (excluding Property). The Club will be allowed to use the Department's watering hoses and sprinklers in order to maintain a green and useful lawn for use by the Club. The Club shall also be responsible for mowing and trimming of said lawn, however, the Department may provide this service through a community service program for adult offenders.

The Club is responsible for all other maintenance of the Property, including snow removal, and for repairs and related costs as a result of the Club's occupancy of said property. The Club shall contract [for maintenance and repairs] with competent professionals in their field of expertise. Staff and volunteers may not be used for major repairs or for technical maintenance activities to the Property, unless approved by the Department. The Club shall keep the Property in good condition and protect the Property from deterioration. The Club must inform the Department of all major repairs. All major repairs or other requested improvements or changes to the Property must be submitted to and approved by the Contract Liaison listed herein. The Club is responsible for all supplies, materials, and equipment necessary for its daily operations.

13. ALTERATIONS TO PREMISES

The Club agrees to make no substantial alteration to the premises without the prior written consent of the Department.

14. HOLD HARMLESS AND INDEMNIFICATION

The Club agrees to protect, defend, and save the Department, its elected and appointed officials, agents, and employees, harmless from and against all claims, demands, and causes of action of any kind or character, including the cost of defense thereof, arising in favor of the Club's employees, contractors, volunteers, members, member's relatives, or other third parties on account of bodily or personal injuries, death, damage to

property, loss of property or harm to the environment arising out of use of the Property, whether a permitted use or not, or in any way resulting from the acts or omissions of the Club and/or its agents, employees, representatives, assigns, and subcontractors under this lease.

The Club shall not be held responsible for the negligence of the Department.

15. INSURANCE

The Club must purchase and maintain for the term of the lease the following insurance:

A. Property

At its sole cost and expense, the Club shall insure all its personal property against the following hazards:

- Loss or damage by fire and such other risks (not including earthquake damage) in an amount sufficient to permit such insurance to be written at all times on a replacement cost basis.
- Loss or damage from leakage of sprinkler systems currently, or hereafter, installed in any building on the Property.
- Loss or damage arising from explosion of steam boilers or other fired vessels on-site.

B. General Liability

The Club shall maintain Occurrence coverage with combined single limits of \$1 million per occurrence/\$2 million aggregate per year for bodily injury, personal injury, and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the project/location or the general aggregate limit shall be twice the required occurrence limit. The Club shall name the Department as an additional insured as respects general supervision, products, premises, access to the premise and completed operations. This insurance must be from an insurer licensed to do business in Montana or a domiciliary state and with a Bests rating of no less than A-. The Club must provide 30 days written notice to the Department of any material change in coverage including cancellation and that the Department reserves the right to request copies of the Club's insurance coverage at any time.

The Club's insurance coverage shall be primary insurance as respects the Department, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the Department, its officers, officials, employees, or volunteers shall be excess of the Club's insurance and shall not contribute with it.

16. COMPLIANCE WITH LOCAL, STATE AND FEDERAL LAWS

The Club must comply with all applicable state and federal law. This includes, but is not limited to, the Montana Human Rights Act, the Civil Rights Act of 1964, the Age discrimination Act of 1975, the Americans with Disabilities Act of 1990, PL 101-336, and Section 504 of Rehabilitation Act of 1973.

The Club agrees to comply with all rules and regulations adopted under the Montana Safety Act and the Act itself. The Club further agrees to comply with the ordinances and laws of the City of Glendive and the State of Montana, affecting the use of the premises and to assume all legal responsibility for any charges or damages for non-observance.

The Club agrees to provide the Department of Corrections, the Legislative Auditor, the Legislative Fiscal Analyst, or their authorized agents access to any records concerning this lease.

The Club agrees to create and retain all records supporting the services rendered or goods delivered for a period of three years after either the completion date of this lease or the conclusion of any claim, litigation or exception relating to this lease taken by the state of Montana or a third party.

17. HOLDOVER TENANCY

In the event the Club holds the Property beyond the terms of this lease, in the absence of a written agreement to the contrary, it shall be deemed a month-to-month tenancy subject to all terms and conditions of this lease. This holdover tenancy may be terminated at any time by either party upon 30-day written notice prior to the beginning of the final month of occupancy.

18. TERMINATION

Either party may terminate this lease with ninety (90) days written notice. Upon termination of this lease, the Club is to vacate the property and the Department may take immediate possession of the Property, inclusive of any improvements made by the Club to the Property. Upon the Department taking possession of the Property, the Club has no interests in the improvements and may not seek compensation for or recovery of the improvements except upon agreement of the Department.

In addition, the Department may terminate this lease at any time if the Club should use the Property for anything other than the permitted use or fails to comply with the terms of this lease. The Department must provide written notice to the Club of any failure to comply with this lease and allow thirty (30) days written notice prior to the date of termination.

19. SEVERABILITY

It is understood and agreed by the parties hereto that if any term or provision of this lease is held to be illegal, void or in conflict with any Montana law, the validity of the remaining terms and conditions shall not be affected. The rights and obligations of the parties shall be construed and enforced as if this lease did not contain the particular term, condition, or provision held to be invalid.

20. VENUE AND INTERPRETATION

Both parties agree that this lease shall be governed and interpreted according to the laws of the State of Montana. In the event of a dispute arising over this lease, the proper venue for the hearing of the case is the District Court of the First Judicial District of the State of Montana, in and for the County of Lewis and Clark.

21. SUBLEASE

The Club has no right to sublet the Property to a Sublessee, without prior written consent of the Department.

22. SMOKE FREE ENVIRONMENT

The Club agrees that the Property shall be maintained as a smoke-free environment. "Smoke" means smoke from a lighted cigar, cigarette, or pipe or any other lighted tobacco product as defined in MCA 50-40-202.

23. ENTIRE LEASE

This Lease, consisting of Sections 1 through 23, contains the entire agreement between the Club and the Department. Any lease hereafter made shall not be effective to modify this lease unless such agreement is in writing and is signed by both parties to the original lease.

IN WITNESS THEREOF, the parties have entered into and executed this Lease on the date listed below.

DEPARTMENT

Mike Ferriter, Administrator
Adult Community Corrections Division

Date

CLUB

Richard Rowe, President
Boys and Girls Club of Dawson County

Date

Approved for Legal Content by:

Legal Counsel
Department of Corrections

Date

LEASE AMENDMENT

LEASE #05-014-ACCD

THIS LEASE AMENDMENT (**Amendment #1**) is made and entered into by and between the Montana Department of Corrections (DEPARTMENT) 1539 11th Ave., Helena, Montana 59620-1301 and the **Boys and Girls Club of Dawson County** (hereinafter referred to as "Club") located at PO Box 875, Glendive MT 59330 and is effective upon receipt of all signatures.

WHEREAS, the parties have entered a Lease with an original effective date of September 1, 2004 and Section 23 provides that the parties may modify their agreement in writing; and

WHEREAS, the Contract expires June 30, 2005 and Section 5 provides that the parties may extend the expiration date of the Contract.

NOW THEREFORE, the parties agree to amend the Lease as follows (**new language underlined, old language interlined**):

3. PREMISES DESCRIPTION

The area of space being leased consists of the ~~entire two (2) buildings now known as Cottage II Buildings 3&4~~ (Each building consists of 7,685 sq. ft. and is hereinafter referred to as "Property") on the campus formerly known as Eastmont Human Services (Eastmont), located at 700 East Little Street, Glendive, Montana. The Property includes the attached fenced yard that is immediately adjacent to ~~Cottage II Building 4~~.

4. TERM OF LEASE

The term of this Lease is for a period of ~~ten months, time~~ beginning September 1, 2004 and terminating June 30, ~~2005~~ 2006, unless earlier terminated as provided in this Lease.

5. LEASE EXTENSION

This Lease may be extended for additional periods of time upon mutual agreement of the Parties - subject to the conditions of this Lease. Upon expiration of this Lease, and in the absence of new written agreement, the terms listed herein shall continue to govern the agreement between the parties until such time as a new Lease is signed

6. CONSIDERATION

The annual amount of rent the Club shall pay to Department is ~~\$2,400.00~~ \$4,800.00, **payable in equal monthly installments of ~~\$200.00~~ \$400.00**. The Club shall make monthly lease payments without the need for a separate invoice from Department. Lease payments are due on the first business day of the month.

8. UTILITIES

Telecommunications

The Club is directly responsible for scheduling, maintaining, and payment of communication connections and services (i.e., telephone, data, internet, etc.).

Gas and Electric

The Club is also financially responsible for the appropriate portion of the gas and electrical utility costs incurred in relation to the Property. However, gas and electric aren't separately metered to the Property, ~~Cottage 3~~ Building 1 and the facility yard lights are metered for electric only and gas is metered only for the facility as a whole. Because actual monthly costs can't be accurately determined by either party, the Club's utility payments will be determined using a formula based upon the amount of square footage leased by the Club, as relates to the total square footage of all buildings on the Eastmont campus. The Department will pay the utility company for gas and electric charges and will then invoice the Club for its share of these costs, in accordance with the agreed upon formulas, as follows:

A. Electric: The area of space being leased ~~in Cottage 2 (7,826 sq. ft.)~~ shall be divided by the total square footage of all Eastmont buildings serviced ~~except the main facility (26,331 sq. ft.)~~ [i.e., ~~7,826 divided by 26,331 = .297%~~]. Therefore, the Club shall pay ~~twenty-nine and seven-tenths percent (29.7%) of electrical charges (excluding Cottage 3 and the yard lights which are individually metered)~~ for electrical costs billed to the Department by Montana-Dakota Utilities Company (MDU), as follows: 1) None of the metered electric costs of Building 1, which is listed on the first line of the MDU bill; 2) 56% of the electric costs listed on line 2 of the MDU bill (Buildings 3&4 represent 55.8% of the square footage being billed on line 2); 3) 34% of line 3 (yard lights) of the MDU electric bill (Buildings 3&4 represent 34% of the total square footage on the Eastmont campus); and 4) 34% of line 4 (Meter Rental) of the MDU electric bill.

B. Gas: ~~Since Cottage II constitutes approximately 10% of the total square footage of the Eastmont buildings, the~~ The Club shall pay 10% 20% of all gas charges billed to the Department until such time that the Department chooses to establish a install separate meters for Cottage II Buildings 3&4. Once the If separate meters are is installed, the Club shall pay the entire gas bill for Cottage II for Buildings 3&4.

Water and Sewer

The Club is responsible for coordinating direct billing and payment of City water and sewer, as it relates to the leased Property.

Sanitation

At no additional cost to the Club, the Club may dispose of its garbage in the dumpsters located on-site. If the Club's volume of garbage becomes excessive and taxes the capacity of the dumpsters, as determined by the Department, the Department shall make arrangements with the City of Glendive for installation of an appropriate dumpster to serve the Club and/or the Department. The Club may be financially responsible for any additional costs or fees incurred by the Department for this service.

9. PARKING AREA AND SIDEWALK MAINTENANCE

The Club agrees to remove snow, ice, sand, gravel, and debris from the ~~parking area and~~ sidewalks immediately adjacent to ~~Cottage II Buildings 3&4~~ Buildings 3&4 in a timely fashion. ~~Once the Department selects a contractor to operate a DOC approved program at the Eastmont facility, the Department intends to make the contractor~~ The WATCH program contractor is responsible for snow removal in the parking lots of Cottage II Buildings 3&4. The Club will continue to be responsible for the sidewalks.

This constitutes the Amendment to the Lease. All other provisions contained in the original Lease, as amended, shall remain unchanged.

DEPARTMENT

Mike Ferriter, Administrator
Adult Community Corrections Division

Date

CLUB

Richard Rowe, President
Boys and Girls Club of Dawson County

Date

Reviewed for Legal Content by:

Legal Counsel
Department of Corrections

Date